

RULE 38.1

RANDOM SELECTION OF GRAND AND PETIT JURORS

The selection of grand and *petit* jurors shall be as prescribed in this rule:

(a) **Places for Holding Court and Designation of Counties.**

The counties designated as constituting each jury division are as follows:

(1) Kansas City - Leavenworth Division. Atchison, Doniphan, Douglas, Franklin, Johnson, Leavenworth, Miami and Wyandotte.

(2) Fort Scott Division. Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Elk, Greenwood, Labette, Linn, Montgomery, Neosho, Wilson and Woodson.

(3) Topeka Division. Brown, Chase, Clay, Dickinson, Geary, Jackson, Jefferson, Lyon, Marshall, Morris, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee and Washington.

(4) Wichita - Hutchinson Division. Butler, Cowley, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick and Sumner.

(5) Dodge City Division. Barber, Barton, Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearney, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Pratt, Rush, Scott, Seward, Stafford, Stanton, Stevens and Wichita.

(6) Salina Division. Cheyenne, Cloud, Decatur, Ellis, Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Ottawa, Phillips, Rawlins, Republic, Rooks, Russell, Saline, Sherman, Sheridan, Smith, Thomas, Trego and Wallace.

(b) **Applicability.** This rule, except as otherwise provided, shall apply separately to each division designated herein.

(c) **Management of the Jury Selection Process.** Pursuant to subparagraph (b)(1) of Section 1863, Title 28, United States Code, the clerk is hereby authorized to manage the jury selection process in the District of Kansas. The clerk shall act under the general supervision and control of the chief judge of the court.

Pursuant to the provisions of 28 U.S.C. § 1863(a), the court may authorize other persons to assist the clerk in the jury selection process.

The clerk shall keep one book for the entire district known as the “Jury Selection Journal” and shall enter chronologically therein each order of the court pursuant to this rule and a minute entry of each act performed by him under the provisions of this rule.

(d) **Source of Names.** The names of prospective grand and petit jurors shall be selected at random from the official lists of registered voters in each of the counties comprising

the divisions herein designated. The names selected shall be assigned serial numbers by division as determined by the clerk. A record shall be maintained by the clerk of the names and numbers assigned to each name.

(e) **Name Selection Procedures.** At the clerk's option, and after consultation with the court, the selection of names from complete source list databases in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, at the option of the clerk and after consultation with the court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of determining qualification for jury service, and from the qualified wheel for summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the master wheel by data computer personnel must ensure that each county within the jury division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. § 1863(b)(3). The selections of names from the source list, the master wheel, and the qualified wheel must also ensure that the mathematical odds of any single person being picked are substantially equal.

(f) **Master Jury Wheel.** Each jury division shall be provided with a master jury wheel into which the names of those selected from the voter registration lists under this rule shall be proportionately placed by the clerk.

The minimum number of names to be placed initially in each master jury wheel shall be as follows:

- (1) Kansas City - Leavenworth Division: Seven thousand five hundred (7,500) names.
- (2) Salina Division: One thousand (1,000) names.
- (3) Topeka Division: Five thousand (5,000) names.
- (4) Wichita - Hutchinson Division: Seven thousand (7,000) names.
- (5) Dodge City Division: One thousand (1,000) names.
- (6) Fort Scott Division: One thousand (1,000) names.

The chief judge may order additional names to be placed in the master jury wheel as necessary. The additional names shall be selected as provided in subsection (e) of this rule.

The master jury wheel shall be emptied and refilled every two years.

(g) **Drawing of Names from the Master Jury Wheel and Completion of Qualification Form.**

(1) **Initial Draw.** From time to time, as directed by the court, the clerk shall publicly draw at random from each divisional master jury wheel, either manually or by use of a

properly programmed data computer, the names or numbers of as many persons as may be required for jury service. Whenever a divisional master jury wheel is maintained on a data computer, the names to be drawn from said wheel shall be selected by using the quotient-starting number formula, as directed by the court. The clerk may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except upon order of the court, and except as required by 28 U.S.C. §§ 1867-1868. Upon drawing names or numbers from a divisional master jury wheel, the clerk shall mail to every person whose name or number is drawn from said wheel a jury qualification form (as defined in 28 U.S.C. § 1869(h)), to fill out and return the form, duly signed and sworn, to the clerk by mail within ten days. If it appears that there is an omission, ambiguity or error in a filled out and returned qualification form, the clerk may return the form with instructions to the person to make such additions and corrections as may be necessary and to return the form to the clerk within ten days.

(2) **Supplementation For Undeliverable and Non-Responding Juror Qualification Forms.** For all juror qualification forms returned to the court as “undeliverable” or those to which no response has been received (after the clerk has sent a follow-up letter to the person who has not responded), the clerk – as soon as practicable – shall issue the same number of new juror qualification forms to be mailed to addresses within the same zip code area to which the undeliverable or non-responding juror qualification forms had been sent. The clerk shall draw these names or numbers for additional juror qualification forms drawn from the Master Jury Wheel.

(3) **National Change Of Address Database.** The clerk shall submit the names on the Master Jury Wheel once a year to be updated and corrected through the national change-of-address system of the United States Postal Service.

(h) **Qualified Jury Wheel.** A qualified jury wheel shall be maintained for each division of the court by the clerk. Into each divisional qualified jury wheel the clerk shall place the names of all persons previously drawn from the divisional master jury wheels, in accordance with subsection (g) of this rule, who have been determined to be qualified as jurors and not exempt or excused pursuant to the provisions of this rule.

From time to time, at the direction of any active judge of this district, the clerk shall publicly draw at random from a divisional qualified jury wheel, either manually or by use of a properly programmed data computer, as many names or numbers of persons as may be required for assignment to grand and petit jury panels. Whenever a divisional qualified jury wheel is maintained on a data computer, the names to be drawn from said wheel shall be selected by using the “quotient-starting number” formula, as directed by the court. The clerk shall prepare or cause to be prepared a separate alphabetical list of names of all persons so drawn and assigned to each grand and petit jury panel. When the court orders a grand or petit jury to be drawn, the clerk shall issue a summons for the required number of jurors. Persons drawn for jury service may, in accordance with 28 U.S.C. § 1866(b), be served personally or by mail addressed to such persons at their usual residence or business address.

The names of petit jurors drawn from the qualified jury wheel may, if requested, be disclosed to the parties and to the public on the day following the drawing upon request of any

party or member of the public; provided, however, the court in which any of the prospective jurors concerned are expected to serve, may, by special order, require that the clerk keep these names confidential where the interests of justice so require.

The names of grand jurors drawn from the qualified jury wheel shall not be maintained in any public record or otherwise disclosed to the public, except upon the order of the district judge in charge of the grand jury on a showing that exceptional circumstances have created a demonstrated need for disclosure.

In assigning prospective jurors to petit jury panels or to panels to be assigned to the bankruptcy court, the clerk shall place the names or numbers of available petit jurors drawn from the divisional qualified jury wheel, as provided in this rule, and who are not excused, in a courtroom jury wheel, and thereafter such necessary names shall be drawn therefrom at random by the clerk and assigned to particular panels for each jury case as directed by the court.

Separate grand jury panels as may be required for service at the places in the district where court is held shall be publicly drawn at random as ordered by the court, either manually or by use of a programmed data computer, or by a combination thereof, from the qualified jury wheels on a divisional basis as follows:

(1) At Kansas City, Leavenworth and Fort Scott: From the Kansas City - Leavenworth and Fort Scott jury wheels.

(2) At Topeka and Salina: From the Topeka and Salina jury wheels.

(3) At Wichita, Hutchinson and Dodge City: From the Wichita - Hutchinson and Dodge City jury wheels.

The required number of names for each centralized grand jury panel shall be taken at random from the qualified jury wheels in proportion as nearly as possible to the number of registered voters in each division every two years. For example, if the total number of registered voters in the Kansas City - Leavenworth and Fort Scott jury divisions was 150,000 and 90,000, respectively, and if 48 prospective jurors were to be summoned for grand jury service at Kansas City, Leavenworth or Fort Scott, then 30 names should be selected at random from the Kansas City - Leavenworth qualified jury wheel and 18 names from Fort Scott's qualified wheel.

The clerk shall issue summonses for the required number of jurors to be called to be served personally or by mail addressed to their usual residence or business address.

(i) **Disqualification or Exemption from Jury Service.** Pursuant to 28 U.S.C. § 1865(a), the chief judge or clerk of this court, or, in his or her absence, any other district court judge shall determine whether a prospective grand or petit juror is unqualified for, or exempt, or to be excused from jury service. The judge or clerk will make the determination from information provided on the juror qualification form and other competent evidence. The clerk shall enter such determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from a divisional master jury wheel.

(1) Pursuant to 28 U.S.C. § 1865(b), any person shall be determined to be qualified to serve on either grand or petit juries in the district court unless he or she:

(A) Is not a citizen of the United States 18 years of age who has resided for a period of one year within the judicial district;

(B) Is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(C) Is unable to speak the English language;

(D) Is incapable, by reason of mental or physical infirmity, to render satisfactory jury service;

(E) Has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored;

(2) Pursuant to 28 U.S.C. § 1863(b), the following persons shall be exempt from jury service:

(A) Members in active service in the Armed Forces of the United States;

(B) Members of the fire or police departments of any state, district, territory, possession, or subdivision thereof; and

(C) Public officers in the executive, legislative or judicial branches of the government of the United States, or any state, district, territory or possession or subdivision thereof, who are actively engaged in the performance of official duties.

(j) **Individual Excuse from Jury Service.** In addition to the members of groups and classes subject to excuse from jury service on request, as provided in subsection (i) of this rule, any person summoned for jury service may be excused by the court, or the clerk under the supervision of the court upon a showing of undue hardship or extreme inconvenience, or both, pursuant to 28 U.S.C. §1866(c). The names of excused persons are to be reinserted into the qualified jury wheel.

Whenever a person is excused for reason of undue hardship or extreme inconvenience, the clerk shall note the reason for the excuse in the space provided on the jury qualification form or on the alphabetical list of names drawn from the divisional qualified jury wheel.

(k) **Groups and Classes, Members of Which are Subject to Excuse on Request.** Pursuant to 28 U.S.C. § 1863(b)(s), and by the adoption of this rule, it is hereby found that jury service by the following groups of persons and occupational classes of persons would entail undue hardship or extreme inconvenience to the members thereof and that the excuse from jury service of the members thereof on request would not be inconsistent with 28 U.S.C. § 1861-1862:

- (1) Persons over 70 years of age.
- (2) Persons who have, within the past two years, served on a federal grand or petit jury.
- (3) Persons having active care and custody of a child or children under ten years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.
- (4) Any person whose services are so essential to the operation of a business, commercial or agricultural enterprise that said enterprise must close if such person were required to perform jury duty.
- (5) Persons in professional occupations, such as doctors, attorneys, dentists, registered nurses, members of clergy or of a religious order.
- (6) Volunteer safety personnel if they serve without compensation as firefighters or members of a rescue squad or ambulance crew for a “public agency.” “Public agency” for this purpose means the United States, any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or other territory of the United States, “or any unit of local government, department, or instrumentality of any of the foregoing.”

(1) **Maintenance and Inspection of Records.** After any master jury wheel is emptied and refilled as provided in this rule, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the clerk before the master wheel was emptied shall be preserved in the custody of the clerk and available for public inspection for at least two years, and thereafter shall not be destroyed except by order of the court.

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NOTE: Rule 38.1 is a mandated rule.

As amended 6/1/07, 4/8/99, 2/28/97, 3/13/92.

Renumbered 6/95. Formerly Rule 125.